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EXAMINER

GOETZ, JOHN S

ART UNIT

PAPER NUMBER

3725

DATE MAILED: 05/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/990,865

Applicant(s)

MCCLELLAN ET AL.

Examiner

John S. Goetz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-26 and 28 is/are rejected.
- 7) ☒ Claim(s) 27 and 29 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Response to Amendment

1. Applicant's amendment has been received and entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Upon further consideration and upon careful review of applicant's remarks this Office action contains the application of new cited art. Accordingly, this action is not made final. The inconvenience to the applicant is regretted.

Claim Rejections - 35 USC § 102

4. Claim 1-3 and 8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by McWhorter et al. (4,398,410 – hereinafter McWhorter).
5. McWhorter discloses a vehicle straightening bench comprising:
 - i) a platform with a front, rear, sides, top and an underside (column 2, lines 20-22);
 - ii) an anchor attachable to the platform (anchor inherent in holes 30 and 32);
 - iii) a downwardly opening track (18) positioned on the underside of the platform (Fig. 3 and column 2, lines 22-28);
 - iv) a carriage assembly (54, 56), and;
 - v) a pulling tower assembly (see tower 34, force exerting hydraulic cylinder 86 and the respective components of each).
6. Regarding claim 2, McWhorter discloses that the pulling tower assembly is pivotally mounted on the carriage assembly (see Fig. 5).

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7. Regarding claim 3, McWhorter discloses that the pulling tower assembly includes a tower (46) attached to a tower arm (40). McWhorter also discloses a pulling tower positioning mechanism (70, 72, 74, 76).

8. Regarding claim 8, McWhorter discloses that the track 18 has an inner rail and outer rail (see Figs. 3 and 7).

Claim Rejections - 35 USC § 103

9. Claims 4-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over McWhorter in view of Ballard.

10. As explained in the previous Office action, Ballard discloses each of the limitations recited in claims 4, 5, and 9-13 and 18. Additionally, Ballard discloses that the disclosed free-floating tower and carriage assembly is “designed to provide a direct pull from any point on the tower and at any angle from the tower so that the pull is directly in line with the vertical and horizontal planes of the damaged part [of the vehicle]” (column 1, lines 31-35). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to provide McWhorter’s versatile downwardly facing carriage track configuration with a free floating tower and carriage, in order to further increase the ability to pull damaged parts on a straight, direct line, as suggested by Ballard.

11. Also as explained in the previous Office action, Ballard discloses a locking mechanism associated with the carriage assembly, as claimed in claims 6, 7 and 14-15 and 17, but did not disclose a “pin-biasing member.” However, Ballard discloses just such a pin-biasing member (spring 113) associated with the pivot beam (24). Furthermore, Ballard expressly states, in this connection, that “[t]he lever 116 is biased to the locked position by a spring 113” (column 4,

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lines 9-10). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide Ballard's carriage assembly locking mechanism with a spring, in order to maintain the pin in a locked position.

12. Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over McWhorter in view of Mingardi (5,131,257).

13. Claims 19-21 add a movable cross member and its various components. Mingardi discloses a movable cross member (7) comprising, *inter alia*:

- i. a opposite ends 6 and 6' that are slidably engaged slide tracks (3a, 3'a and 10);
- ii. a pair of position locks (10-17 and column 4, lines 10-15);
- iii. wherein the lock includes "lock openings" on bar 10 (threads);
- iv. wherein the lock further includes a pivotally mounted lock rod (11), and;
- v. a rod biasing member (17) to force the lock rod into the lock openings (Figs. 3 and 4).

Mingardi discloses that such a movable cross member is useful for the precise positioning of the vehicle prior to straightening operations (column 1, lines 10-53). Additionally, Mingardi discloses that such a movable cross member system allows for "ultrasensitive adjustments" (column 2, line 16) in order to thus carryout "ever more sophisticated straightening operations" (column 1, line 68 through column 2, line 1). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide McWhorter's vehicle straightening device with movable cross members in order to precisely position the damaged vehicle on the bending platform in order to carry out improved and ever more sophisticated straightening operations, as suggested by Mingardi. Also, although Mingardi discloses tracks on the outside of

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the opposed legs (3,3'), absent any disclosure of criticality in solving a stated problem, placing the tracks on the inside would have been an obvious matter of design choice.

14. Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Barton, as explained in the previous Office action.

15. Claims 26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballard in view of Barton, as explained in the previous Office action.

Allowable Subject Matter

16. Claims 27 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

17. Applicant's arguments with respect to claims 1-5, 8-13 and 18 have been considered but are moot in view of the new grounds of rejection. McWhorter teaches a "downwardly opening" carriage track.

18. Applicant's arguments with respect to claims 6,7 and 14-17 have been considered but are moot in view of the new grounds of rejection. As explained above, McWhorter teaches a "downwardly opening" carriage track and Ballard discloses both a "pin biasing member" and an explicit *teaching* as to why one of skill in the art would *motivated* to provide such a mechanism on the carriage locking device in addition to the pivot beam locking device. Additionally, as explained in the previous Office action, Ballard discloses, *inter alia*: (1) coaxial orientation of lock pin (72) and pivot axis (see Fig. 3); (2) a plurality of apertures (73) on the bottom deck

(Figs. 2 and 3); (3) a release cable or pin (see unnumbered member connecting lever arm 74 and pin 72 in Fig. 2); and (4) compression spring 113 (see explanation above).

19. Applicant's arguments regarding claims 22-25 have been fully considered but they are not persuasive.

20. Applicant first asserts that the rejection is conclusory. However, as explained in the previous Office action, Barton's teaching, which would motivate one of ordinary skill in the art to provide Smith with an adjustably inclined brace, is explicit. Barton states that such braces, which "may withstand considerable axial compression" (column 3, line 54), will "greatly resist heavy lateral loading" (column 1, line 63).

21. In response to applicant's argument that Barton is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Barton's vehicle anchoring stand is concerned with supporting said stand against heavy lateral loads from straightening pulls. This is strikingly relevant to applicant's force arm which "substantially reduces the forces, such as the bending force, transmitted through the carriage assembly 100" (applicant's specification page 14, lines 23-24).

22. Finally, Barton discloses, *inter alia*: (1) a substantially fixed end (42); (2) a free end (44); (3) at a selected one of a plurality of attachment locations (36). To the extent applicant argues that Smith could not incorporate the Barton teaching or that Smith must explicitly disclose a problem to be solved, the test for obviousness is not whether the features of a secondary

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reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

23. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a movable carriage assembly, affixed to both the pulling tower and the platform, that moves the pulling tower relative to the platform) are not recited in rejected claim 23. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

24. Applicant's asserts that the rationale for the obviousness rejection of claim 25 is insufficient. Upon further consideration, Barton clearly discloses that members 40,42 and 44 engage in a telescoping function in order to adjust the length of the brace. Thus, claim 25 is obvious for the reasons stated in the rejection of claim 22.

25. Applicant's arguments regarding claims 26 and 28 have been fully considered but they are not persuasive. The arguments for the rejection of claim 22 apply equally to claim 26. Also, as explained above, the inclined braces of Barton are adjustable.

Conclusion


26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John S. Goetz whose telephone number is 703-308-1411. The examiner can normally be reached on Mon, Tues, Thurs, Fri 7:00am-5:30pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allen Ostrager can

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be reached on 703-308-3136. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3579 for After Final communications.

27. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-3136.

JSG
May 12, 2003


ALLEN OSTRAGER
SUPERVISORY PATENT EXAMINER
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